

11 WC 46989
11 WC 46988
11 WC 46990
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STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Tony Pittman,

Petitioner,

14IWCC0401

vs.

NO: 11 WC 46989
11 WC 46988
11 WC 46990

Joliet School District #86,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, medical expenses and prospective medical care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 29, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired

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Page 2

without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAY 30 2014


Michael J. Brennan
Kevin W. Lamborn
Thomas J. Tyrrell

MJB:bjg
0-5/20/2014
052

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

14IWCC0401

PITTMAN, TONY

Employee/Petitioner

Case# 11WC046989

11WC046988

11WC046990

JOLIET SCHOOL DISTRICT #86

Employer/Respondent

On 8/29/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.06% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

4213 LAW OFFICE OF THOMAS P NAUGHTON
23 W JEFFERSON ST
JOLIET, IL 60432

5001 GAIDO & FINTZEN
JUSTIN KANTER
30 N LASALLE ST SUITE 3010
CHICAGO, IL 60602

STATE OF ILLINOIS)

)SS.

COUNTY OF WILL)

- ☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)(18))
☐ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

TONY PITTMAN

Employee Petitioner

v.

Case # **11 WC 46989**Consolidated cases: **11 WC 46988**
11 WC 46990**JOLIET DISTRICT #86**

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **George Andros**, Arbitrator of the Commission, in the city of **New Lenox**, on **July 22, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☒ What was the date of the accident?
- E. ☒ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

FINDINGS

On the date of accident, **7/7/2010**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$47,138.00**; the average weekly wage was **\$906.50**.

On the date of accident, Petitioner was **40** years of age, *single* with **0** dependent children.

Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services.

ORDER

Respondent is ordered to authorize and pay for the reasonable and necessary medical services prescribed by Dr. Urbanosky.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

01 *George J. Androz*

Signature of Arbitrator

August 15th, 2013
Date

AUG 29 2013

FINDINGS OF FACT & CONCLUSIONS OF LAW

With regard to "C", whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent; with regard to "D", what was the date of the accident; and with regard to "E", was timely notice of the accident given to Respondent, the Arbitrator finds the following:

The Petitioner was employed by Respondent as a Building Superintendent providing custodial services at Washington Jr. High, and had been so employed for five years. Based upon the Petitioner's testimony, which the Arbitrator specifically finds to be credible, on July 7, 2010, two female co-workers were attempting to move a heavy file cabinet and requested the Petitioner's assistance. As the Petitioner was moving the file cabinet it tipped to the left. The Petitioner grabbed the heavy file cabinet with his left hand and arm in an attempt to keep it from falling over, and as he did so, he immediately heard a "pop" in his left shoulder and noticed pain across the top of his left shoulder and the top of his left arm. The Petitioner testified that he told his co-workers that he hurt his arm and immediately went to the principal's office where he filled out a form 45. This document is in evidence as Petitioner's exhibit 1. Respondent offered no credible or reliable evidence to contradict or rebut Petitioner's credible testimony.

The Arbitrator therefore finds that the Petitioner sustained an accidental injury arising out of and in the course of his employment on July 7, 2010; and that timely notice of this accidental injury was given to Respondent.

With regard to "F", whether the Petitioner's current condition of ill-being is causally related to the injury; and with regard to "K", whether the Petitioner is entitled to any prospective medical care, the Arbitrator finds the following:

Petitioner sought treatment from his employer for his work related left shoulder injury and the employer sent him to Meridian Medical Associates on July 21, 2010. According to the records of this facility, in evidence as Petitioner's Exhibit 2, when Petitioner was seen on July 21, 2010, he gave a consistent history of his work injury, demonstrated objective findings of shoulder strain and was prescribed muscle relaxers and an x-ray. He was also placed on work restrictions of no lifting more than ten pounds and no lifting above shoulder level.

At the follow-up with Meridian Medical Associates on July 28, 2010, a resolving left shoulder strain was diagnosed by Dr. Papaliou, and one week of physical therapy with three visits per week was prescribed. (PX2) Also, upon Petitioner's request, a full duty work release was given to accommodate Petitioner's employer. By the time Petitioner returned for a recheck at Meridian Medical Associates on August 5, 2010, however, it was documented that Petitioner's left shoulder was feeling "worse" and that "heavy lifting" at work seemed to exacerbate the discomfort. A possible rotator cuff tear was suspected and an MRI was ordered by Dr. Papaliou. (PX2)

Petitioner underwent the MRI, following which he was diagnosed with a "partial tear left rotator cuff" by Dr. Papaliou as of August 19, 2010. An additional week of physical therapy was prescribed, as was an orthopedic consultation with Dr. Dorning on August 26, 2010. (PX2) (1)

After examining Petitioner on August 26, 2010, Dr. Dorning diagnosed "left shoulder impingement syndrome with partial rotator cuff tear". A subacromial injection was performed, two additional weeks of physical therapy were prescribed, and Petitioner was restricted from all work until his follow up with Dr. Dorning on September 13, 2010. (PX2)

By September 13, 2010, Dr. Dorning noted some improvement after physical therapy and the injection. An additional two weeks of physical therapy was recommended, and Petitioner was released to return to work with a 20 pound lifting restriction below shoulder level. At a subsequent examination on September 30, 2010, Dr. Dorning released Petitioner to return work without restrictions and instructed him to return on an as-needed basis. (PX2)

Petitioner then came under the care of Dr. Cohen on October 2, 2010 for complaints related to carpal tunnel syndrome. Petitioner was sent to Dr. Cohen at Meridian by his employer. According to Dr. Cohen's office note of May 4, 2011, Dr. Cohen stated: "He (Petitioner) has had some problems with his shoulder again which Dr. Dorning has taken care of in the past. *We don't have worker's compensation approval to see him for that.*" (PX2, emphasis added) Based upon this notation, the Arbitrator infers Dr. Cohen had not addressed any shoulder complaints since worker's compensation did not authorize him to do so.

Dr. Cohen thereafter provided some minimal left shoulder care. On June 7, 2011, after noting that Petitioner had "some recurrent impingement syndrome involving his left shoulder which probably is associated with lifting at work", Dr. Cohen performed a left shoulder subacromial injection. By June 28, 2011, however, Petitioner reported to Dr. Cohen that his shoulder was feeling good, he could tolerate the occasional achiness in the shoulder, and he was not looking to do anything further with it. (PX2)

Petitioner sought a second opinion from his primary care physician, Dr. Sanjay Pethkar. Petitioner was ultimately referred by Dr. Sanjay Pethkar to Dr. Urbanosky at Hinsdale Orthopaedics for a second opinion regarding his left shoulder on May 23, 2012. (PX3) Upon examination of Petitioner's left shoulder, Dr. Urbanosky documented the following findings: posterior glenohumeral joint tenderness, positive Neer's impingement test, positive Hawkins impingement test, positive Speed's test, positive Yergason's test, and pain with resisted shoulder abduction. Another MRI of the left shoulder was performed on June 12, 2012, following which Dr. Urbanosky diagnosed a superior glenoid labrum lesion and a partial tear of the rotator cuff. Dr. Urbanosky recommended surgery as of July 11, 2012.

Respondent's Section 12 evaluator was Dr. Aron Bare. Dr. Bare examined petitioner on October 10, 2012. Dr. Bare was admittedly not provided with complete medical records for review. He was not provided with any medical records referencing Petitioner's history of injury lifting the file cabinet in 2010. (See p. 4, par 1 Dr. Bare's report) Even more significantly, he was not provided with Dr. Urbanosky's office note of July 11, 2012 recommending surgery. The selective issuance of background records to Dr. Bare gives his opinion less weight as to both completeness and content.

Apparently due to his lack of complete, correct information, Dr. Bare erroneously reported a date of accident of May 26, 2010, a date of accident which is not supported by the records in evidence. He erroneously attributed Petitioner's symptoms to repetitive lifting based upon on Dr. Cohen's office note of June 2, 2011, rather than to the injury lifting a file cabinet in 2010.

Dr. Bare further erroneously concluded that from Petitioner's return to full duty in 2010 to the time he sought active care for his left shoulder in 2011 Petitioner was "essentially asymptomatic." In so finding, Dr. Bare overlooked Dr. Cohen's specific statement in his records that he was not authorized by the workers' compensation carrier to treat Petitioner for any shoulder problems. (2)

The fact that Dr. Cohen did not treat Petitioner's left shoulder does not, however, mean the left shoulder was asymptomatic; it simply meant he was not authorized to treat the condition; therefore his records were silent regarding the shoulder. The Arbitrator finds this does not mean that Petitioner's left shoulder was asymptomatic; it only means Dr. Cohen was not treating Petitioner for his left shoulder, and Dr. Bare's opinion to the contrary was by inference, speculation. Dr. Bare does acknowledge, however, the petitioner's need for surgery; he just disputes its causal connection to his employment.

Based upon the above, the Arbitrator finds Dr. Bare's report is based upon incomplete information and to a certain extent when determining the preponderance of the evidence - speculation, and is, therefore unreliable. The Arbitrator instead adopts the opinions, findings and treatment recommendations of Dr. Leah Urbanosky, orthopedic surgeon, including the recommendation for surgery.

STATE OF ILLINOIS)
) SS.
 COUNTY OF SANGAMON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Kevin Logan,

Petitioner,

14IWCC0402

vs.

NO: 11 WC 11860

City of Lincoln,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, notice, medical expenses and permanent disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 15, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAY 30 2014


Michael J. Brennan


Thomas J. Tyrrell


Kevin M. Lamborn

MJB:bjg
0-4/21/2014
052

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0402

LOGAN, KEVIN

Employee/Petitioner

Case# **11WC011860**

CITY OF LINCOLN

Employer/Respondent

On 7/15/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0564 WILLIAMS & SWEE LTD
DIRK MAY
2011 FOX CREEK RD
BLOOMINGTON, IL 61701

0180 EVANS & DIXON LLC
JAMES M GALLEN
211 N BROADWAY SUITE 2500
ST LOUIS, MO 63102

STATE OF ILLINOIS)

COUNTY OF SANGAMON)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

14IWCC0402

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

KEVIN LOGAN

Employee/Petitioner

v.

CITY OF LINCOLN

Employer/Respondent

Case # 11 WC 11860

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Springfield**, on **June 11, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other

FINDINGS

14IWCC0402

On December 8, 2009, Respondent *was* operating under and subject to the provisions of the Act.

On these dates, an employee-employer relationship *did* exist between Petitioner and Respondent.

On these dates, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of these accidents *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injuries, Petitioner earned \$48,712.82; the average weekly wage was \$936.79.

On the date of accident, Petitioner was 40 years of age, *married* with 0 dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit for \$0 for TTD, \$0 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of \$0.

Respondent is entitled to all applicable credit under Section 8(j) of the Act.

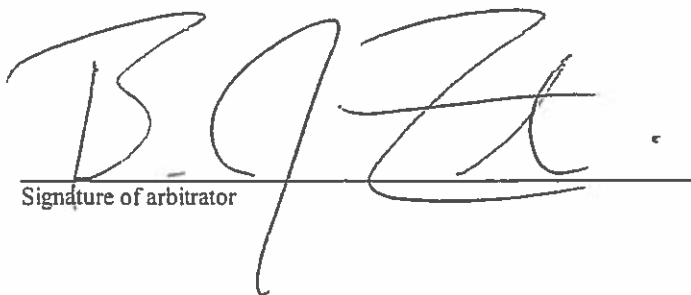
ORDER

No medical expenses are awarded in the instant claim.

Respondent shall pay Petitioner permanent partial disability benefits of \$562.07/week for 12.5 weeks, because the injuries sustained caused the 2.5% loss of the person as a whole as provided in Section 8(d)2 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Signature of arbitrator

07/09/2013
Date

JUL 15 2013

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

14IWCC0402

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION**

KEVIN LOGAN
Employee/Petitioner

v.

Case # 11 WC 11860

CITY OF LINCOLN
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

The only issues in dispute in the present claim are liability for medical expenses and nature and extent of the injury. Petitioner, Kevin Logan, has been employed by Respondent, the City of Lincoln, as a laborer in its street department division since 1999. A decision concerning Petitioner's neck injuries was issued separately. (See Case Numbers 09 WC 2849; 10 WC 7375; and 10 WC 7376). On December 8, 2009, Petitioner was lifting 55 gallon barrels in the course of his work. When lifting a barrel, he testified that he twisted in a fashion that caused a low back spasm. An accident report was completed on December 14, 2009. (Petitioner's Exhibit (PX) 1). Petitioner had undergone two low back surgeries prior to the accident, including a lumbar spine fusion in 2001, and confirmed he had consistent low back pain following his prior surgeries.

On December 14, 2009, Petitioner presented to Dr. Joseph Williams, the orthopedic surgeon who performed his two-level cervical fusion that is the subject of the three referenced claims above. Petitioner saw the doctor on this date for a follow-up evaluation concerning his cervical condition. Dr. Williams ordered a MRI, which occurred on December 24, 2009. The lumbar MRI revealed minimal degenerative changes at L1-2, L2-3 and L3-4, with no evidence of canal or foraminal compromise. Dr. Williams' January 4, 2010 note mentions the status post L4-5 instrumented fusion performed by Dr. Pineda years ago. At the time of that visit, Petitioner complained of predominantly low back pain with occasional pain down the lower extremities. Dr. Williams' assessment included chronic low back pain and mild lumbar degenerative disc disease. (PX 6).

Petitioner underwent a course of pain management treatment for his low back in 2010 and 2011 at Memorial Medical Center – Spineworks Pain Center with Dr. Ferdinand Salvacion. This treatment also involved pain management for his cervical, shoulder and hip conditions, which are not a part of this claim. (PX 7). Petitioner testified that the pain medications he currently takes for his cervical condition doubles as medication to help with his low back issues. Petitioner testified he currently experiences persistent low back pain, and must perform extensive stretching exercises to assist with his condition. Petitioner entered into evidence a series of medical bills he claims Respondent is liable for as a result of both his neck and low back injuries. (PX 9). As noted, the neck injuries are not at issue here.

CONCLUSIONS OF LAW

Issue (J): Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Petitioner claims to be entitled to unpaid medical expenses as a result of the stipulated low back injury at issue. However, Petitioner made no effort to indicate what invoices he claims are a result of the claim at bar. (See PX 9; Arbitrator's Exhibit 4). Upon reviewing the medical invoices in Petitioner's Exhibit 9, it is apparent that some expenses are a result of the pain management Petitioner received from the Spineworks Pain Center. As noted *supra*, that pain management also involved treatment for Petitioner's neck condition, which is the subject of Case Numbers 09 WC 2849, 10 WC 7375, and 10 WC 7376. A decision was issued in those cases awarding Petitioner unpaid medical expenses set forth in Petitioner's Exhibit 9. Further, Petitioner noted that the medication he receives for his neck condition also constitutes medication to help with his low back problems. Therefore, the Arbitrator declines to award Petitioner double the amount of medical expenses to which he is entitled.

Issue (L): What is the nature and extent of the injury?

As a result of the stipulated work injury at issue, Petitioner aggravated his pre-existing low back condition. Petitioner had undergone two prior low back surgeries before the December 8, 2009 work accident. Dr. Williams diagnosed Petitioner as having chronic low back pain and mild lumbar degenerative disc disease. Petitioner confirmed he did indeed have chronic low back pain since his lumbar surgeries. Accordingly, Petitioner suffered a "strain-type" injury on December 8, 2009, that simply aggravated his pre-existing condition. His low back pain persists.

Based on the foregoing, the Arbitrator finds that Petitioner has sustained the 2.5% loss of use to the person as a whole pursuant to Section 8(d)2 of the Act as a result of his work injury, and awards permanent partial disability benefits accordingly.

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Kevin Logan,

Petitioner,

14IWCC0403

vs.

NO: 09 WC 2849
10 WC 7375
10 WC 7376

City of Lincoln,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue(s) of accident, causal connection, medical expenses, permanent disability and notice, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 15, 2013 is hereby affirmed and adopted.

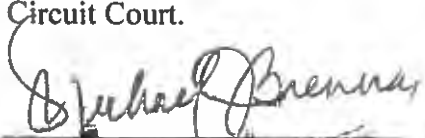
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

14IWCC0403

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAY 30 2014


Michael J. Brennan


Thomas J. Tyrrell


Kevin W. Lamborn

MJB:bjg
0-4/21/2014
052

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0403

LOGAN, KEVIN

Employee/Petitioner

Case# **09WC002849**

10WC007375

10WC007376

CITY OF LINCOLN

Employer/Respondent

On 7/15/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0564 WILLIAMS & SWEE LTD
DIRK MAY
2011 FOX CREEK RD
BLOOMINGTON, IL 61701

0180 EVANS & DIXON LLC
JAMES M GALLEN
211 N BROADWAY SUITE 2500
ST LOUIS, MO 63102

STATE OF ILLINOIS)

COUNTY OF SANGAMON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)(18))
☒ None of the above

14IWCC0403

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

KEVIN LOGAN

Employee/Petitioner

Case # 09 WC 2849

Consolidated cases: 10 WC 7375; 10 WC 7376

v.

CITY OF LINCOLN

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Springfield**, on **June 11, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☒ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other

FINDINGS

14IWCC0403

On 08/08/2008, 11/13/2008 and 12/03/2008, Respondent *was* operating under and subject to the provisions of the Act.

On these dates, an employee-employer relationship *did* exist between Petitioner and Respondent.

On these dates, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of these accidents *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injuries, Petitioner earned \$46,480.53; the average weekly wage was \$893.86.

On the date of accident, Petitioner was 39 years of age, *married* with 0 dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit for \$0 for TTD, \$0 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of \$0.

Respondent is entitled to all applicable credit under Section 8(j) of the Act.

ORDER

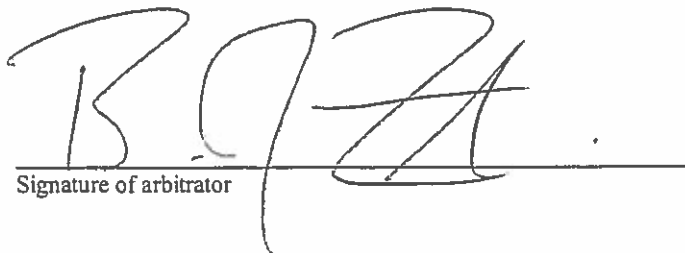
Respondent shall pay for all reasonable and related medical services, as set forth in Petitioner's Exhibit 9 (and as more fully discussed in the Memorandum of Decision of Arbitrator), as provided in Section 8(a) of the Act, and subject to the medical fee schedule, Section 8.2 of the Act. Respondent shall have credit for all medical bills paid by it or through its group plan pursuant to Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of \$595.91/week for 12 2/7 weeks, commencing January 8, 2009 through April 4, 2009, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$536.32/week for 125 weeks, because the injuries sustained caused the 25% loss of the person as a whole as provided in Section 8(d)2 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Signature of arbitrator

07/09/2013
Date

JUL 15 2013

STATE OF ILLINOIS)
) SS
 COUNTY OF SANGAMON)

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

KEVIN LOGAN
 Employee/Petitioner

v.

Case # 09 WC 2849
 Consolidated Cases: 10 WC 7375; 10 WC 7376

CITY OF LINCOLN
 Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner, Kevin Logan, has been employed with Respondent, the City of Lincoln, in its street department division as a laborer since 1999. Petitioner reviewed a job description form, which he testified was accurate and consistent. (See Petitioner's Exhibit (PX) 2, Petitioner's Deposition Exhibit 3). Petitioner testified that he lifts frequently with his job, and this involves lifting an average of 50-80 pounds. He also operates several types of motor vehicles on a regular basis with his job, such as dump trucks, back hoes, snow plows, lawn mowers, and street sweeper trucks. Petitioner also regularly uses tools with his job, such as chainsaws, jackhammers, drills, hammers and concrete saws.

In early August 2008, Petitioner testified that he noticed his hands were getting more numb, particularly the left hand. He noticed increased problems during this time at work when he was driving dump trucks (in that his head was bobbing frequently), when shoveling, and when driving the street sweeper, as he was frequently looking down and to the right. He also noticed the aforementioned activities made his arms numb. Petitioner testified that he called the City Hall during this time and reported that he was going to see a doctor.

On August 8, 2008, Petitioner presented to Dr. John Wahab at the Orthopaedic Center of Illinois, complaining of, *inter alia*, numbness in his left hand. Petitioner reported that his work activities were aggravating this condition. Dr. Wahab suggested a nerve conduction study to determine if Petitioner was suffering from carpal tunnel syndrome. (PX 6).

In early November 2008, Petitioner noticed that his hands were continuing to be numb. The numbness would not alleviate during this time, as opposed to previous times when he testified the numbness would "come and go." When this numbness persisted and did not alleviate, Petitioner testified he was determined to learn its cause. During this time period, Petitioner testified he called the assistant to the City Clerk at Respondent's City Hall. He knew her surname was McCann, and that she is presently the secretary for Respondent's police department. He testified that he told Ms. McCann that he was having issues with his hands, in that they were numb and tingling. He testified that he told her he would be going to a doctor for this condition.

On November 5, 2008, Petitioner underwent an EMG/NCV with Dr. John Watson to further evaluate for carpal tunnel syndrome versus radiculopathy. Dr. Watson's history indicated that Petitioner was complaining of left hand numbness and pain for the past several months, as well as neck pain and occasional shooting pain down the arm. Dr. Watson interpreted left upper extremity C6 radiculopathy, and recommended a cervical MRI. Petitioner underwent the cervical MRI on November 10, 2008. The MRI revealed the following: pronounced degenerative change with significant canal and foraminal stenosis at C5-C6; and a broad-based disc herniation with significant canal and foraminal stenosis at C6-C7, more pronounced on the left than the right. (PX 6).

Petitioner returned to Dr. Watson on November 13, 2008, noting neck and bilateral arm pain. Dr. Watson reported that Petitioner was a surgical candidate, and referred him to Dr. Williams for a surgical consultation. (PX 6).

Petitioner presented to Dr. Joseph Williams on November 18, 2008. The doctor's diagnoses were chronic axial neck pain, chronic bilateral shoulder pain (left greater than right), and C5-C6 and C6-C7 disc degeneration with central stenosis. Dr. Williams noted that there was a "tremendous amount" of stenosis at the aforementioned two cervical levels. Due to an artifact being present on the previous films, new MRI films were ordered. The new MRI revealed severe canal and foraminal stenosis at C5-C6 and significant canal stenosis at C6-C7. (PX 6).

In early December 2008, Petitioner again noted he was experiencing continued hand numbness, as well as pain between his shoulder blades. Petitioner testified that following this most recent episode, he contacted Ms. McCann again in December 2008, and told her that he was still having the issues he reported in November 2008, and that he was again seeking medical treatment for the condition. He continued to work through the end of 2008.

Petitioner again presented to Dr. Williams on December 3, 2008, complaining of the continued neck pain, numbness and tingling in his hands, and pain into the bilateral shoulders. He also complained of pain radiating into the left scapula on this date. Dr. Williams recommended cervical fusion. (PX 6). Petitioner underwent this cervical fusion on January 8, 2009. The operative procedure was listed as a "C5-C6, C6-C7 anterior cervical discectomy and fusion with instrumentation and autograft." The bone graft used in the fusion was taken from Petitioner's pelvis area. The pre- and post-operative diagnoses were: 1. C5-C6, C6-C7 degenerative disc disease; 2. C5-C6, C6-C7 cervical stenosis; 3. Chronic axial neck pain; and 4. Chronic cervical radiculopathy. (PX 5). Petitioner underwent a course of post-operative physical therapy, and received what Dr. Williams described as "significant improvement" following the surgery and resulting conservative follow-up care. (PX 2, p. 13). Dr. Williams released Petitioner to return to work on April 8, 2009. (PX 2, p. 19).

Dr. Williams authored a letter to Petitioner's counsel dated April 16, 2009, and stated in that letter the following: "I have reviewed Mr. Kevin Logan's medical records as well as my recollection of his complaints and condition. I feel that it is possible that the work related activities that he participated in could very well have aggravated a chronic condition within his cervical spine." (PX 2). Dr. Williams' deposition testimony was taken on May 31, 2011. (PX 2). Dr. Williams reviewed Petitioner's job description and demands form, mentioned *supra*. Dr. Williams also discussed Petitioner's job activities with him. (PX 2, pp. 11-12). Dr. Williams testified that it was within reason that Petitioner's job demands could have exacerbated his symptoms. (PX 2, p. 12). Dr. Williams recalled that Petitioner reported he had been holding flags, driving a truck (and complaining of bouncing and holding his head in one position

while driving said truck), using a rake, and engaging in repetitive lifting of objects at work. (PX 2, p. 15). When asked what type of mechanisms or strains were necessary to aggravate Petitioner's cervical condition, Dr. Williams answered, "[r]epetitive motions where he's having to strain to rotate his head in one direction; having to maintain his head in a fixed position for any length of time; straining with his upper extremities and neck." (PX 2, p. 12). Dr. Williams testified that Petitioner's neck surgery was necessary due to the chronic nature of his symptoms, the fact that he had not seen improvement with conservative measures, and due to his MRI and EMG results. (PX 2, p. 14).

Petitioner testified to previous neck problems before his claimed 2008 work accidents. MRI films taken on August 5, 2002 indicated mild right paracentral disc osteophyte complex with narrowing of the right C5-6 foramina and minimal flattening of the right cord at C5-C6; and a small central disc osteophytic complex with no significant central canal stenosis or foraminal narrowing at C6-C7. (RX 4). On January 26, 2005, a box fell on Petitioner's head while at work. He sought medical treatment immediately following the accident, and subsequently received chiropractic treatment following the injury with Daniel Freesmeier, D.C. (PX 8; RX 5-7). Medical records from Family Medical Center indicate Petitioner was diagnosed with left shoulder supraspinatus tendonitis and a cervical strain as a result of this incident. (PX 3). On January 31, 2005, the medical records indicate that Petitioner had no radicular pain coming from his neck. (PX 2, Respondent's Dep. Exh. 1). On February 14, 2005, the medical records indicate that Petitioner regained full cervical range of motion, and a diagnosis was made of "[r]esolved cervical strain." (PX 3). Petitioner testified that he continued to work his normal duties following this episode. However, he testified that he has had continued neck pain since the box fell on him in 2005. The chiropractic records of April 30, 2007 indicate that Petitioner reported neck pain and that he believed his neck had never "felt right" since his accident from several years prior. (PX 8; RX 5). Chiropractic records from mid-to-late June 2008 (less than two months before Petitioner's first claimed work injury) indicate that Petitioner was experiencing neck pain that radiated into the arm. Those records indicate Petitioner began seeing some signs of symptom improvement with that care. (PX 8; RX 6).

Petitioner was evaluated at Respondent's request pursuant to Section 12 of the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq.* (hereafter the "Act") with Dr. David Lange on July 12, 2011. Dr. Lange took a history from Petitioner, reviewed medical records, and conducted a physical examination. Dr. Lange diagnosed the following: 1. Degenerative disc disease at C5-6 and C6-7; 2. Herniated disc at C6-7; 3. Left upper extremity radiculopathy; and 4. Chronic/recurrent symptoms suggestive for Lhermitte's phenomenon. Dr. Lange noted that Petitioner's MRI from 2002 "suggested simply degenerative changes [at] C5-6 and C6-7, obviously common in the general population." Dr. Lange opined that it was "reasonable to assume" that Petitioner's condition for which the present claims are at issue resulted from the "box incident of January 2005." Dr. Lange believed that Petitioner's symptoms suggested C6-7 pathology "likely continuing from the incident in January 2005." He reported that it was "reasonable to assume that Mr. Logan sustained a herniation at C6-7" as a result of the 2005 box incident. (RX 1).

Dr. Lange also reported that the treatment Petitioner received, including the cervical surgery, was reasonable and necessary to address the C6-7 herniation. He opined that the surgery would have been causally associated with the January 2005 box incident. (RX 1).

Petitioner further testified concerning the disputed issue of "notice" during cross-examination. When asked whether he told the assistant at the City Hall that he believed his problems were work related when he called on the three occasions discussed above, he testified that there would have been no other

reason to have called them if it was indeed not work related, and that it was his understanding that the agents in the City Hall knew he was reporting a work injury. Petitioner also testified that he does not recall formally reporting his injuries to his supervisor, Tracy Jackson, but that he mentioned these injuries to Mr. Jackson and told him he believed they were work related.

Tracy Jackson testified at Respondent's request. Mr. Jackson is Respondent's street and alley superintendant, and was Petitioner's direct supervisor during all relevant times discussed herein. Mr. Jackson testified that Petitioner never made a formal report to him regarding a work accident from August 2008 through January 2009. He further did not recall Petitioner ever discussing a work injury with him during that time. Mr. Jackson testified that injuries can be reported to him or his assistant. He also testified that injuries can be reported to the Deputy City Clerk in Respondent's City Hall. On cross-examination, Mr. Jackson testified that Petitioner told him he was having a neck surgery in January 2009, and that this was told to Mr. Jackson approximately two days before the surgery occurred.

Petitioner testified that he currently experiences stiffness in his neck, and gets migraine headaches about one time per month. If he lifts something too heavy, like buckets of concrete, or engages in shoveling, he experiences symptoms. He testified that the range of motion in his neck is not as free as it used to be. If he moves his neck frequently, it becomes sore. He also experiences numbness in his hip area where bone was taken out for grafting in his neck fusion. He currently takes pain medications and uses ice/heat therapy. Petitioner is currently engaging in the same job duties he performed before the claimed work injuries.

Petitioner offered into evidence a series of medical invoices he claims he incurred as a result of the claimed work accidents, with an outstanding balance of \$3,629.35. (See PX 9). He testified that most if not all of these bills were paid through the group insurance plan he had with Respondent. It was stipulated that Respondent would get all applicable credit under Section 8(j) of the Act.

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; and

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

Petitioner had a pre-existing cervical condition prior to 2008. According to Dr. Lange, Respondent's examining physician, Petitioner's MRI from 2002 "suggested simply degenerative changes...common in the general population." According to the medical records, the episode in January 2005 where a box fell on Petitioner caused a cervical strain. That strain was diagnosed as "resolved" about a month later. Petitioner continued to complain of neck pain throughout the years leading up to 2008, and freely admitted as such at trial. He sought chiropractic treatment intermittently from 2005 until about two months prior to his claimed work accident in 2008. Petitioner testified that he continued to work his normal duties following the January 2005 box episode. Petitioner then began complaining to his chiropractor of neck pain that radiated into the arm in mid-June 2008, less than two months before the first claimed date of accident.

In August 2008, Petitioner testified that his hand numbness was being aggravated by his conditions at work. He decided to seek treatment for this symptom on August 8, 2008. Dr. Wahab

recommended electrodiagnostic studies at this time to rule out possible carpal tunnel syndrome. In November 2008, Petitioner noticed that his hands were continuing to be numb, and that the numbness would not alleviate during this time, as opposed to previous times when he testified the numbness would "come and go." He underwent the electrodiagnostic testing on November 5, 2008, which ruled out carpal tunnel syndrome but revealed cervical radiculopathy. In early December 2008, Petitioner further experienced radiating pain into the left scapula, as well as pain between his shoulder blades. Petitioner underwent a cervical fusion per Dr. Williams on January 8, 2009. The pre- and post-operative diagnoses were: 1. C5-C6, C6-C7 degenerative disc disease; 2. C5-C6, C6-C7 cervical stenosis; 3. Chronic axial neck pain; and 4. Chronic cervical radiculopathy. Dr. Lange's diagnoses of Petitioner were, *inter alia*, degenerative disc disease at C5-6 and C6-7; herniated disc at C6-7; and left upper extremity radiculopathy. Petitioner underwent conservative care following surgery, and was released to return to work with good results noted. He still experiences some residual symptoms in his neck.

An accidental injury need not be the sole causative factor, or even the primary causative factor, as long as it is a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill.2d 193, 797 N.E.2d 665, 672-673 (2003). The Arbitrator finds that Petitioner suffered an aggravation of his pre-existing cervical condition as a result of the work accidents at issue, and further that his current condition of ill-being is causally related to those accidents.

While Petitioner had pre-existing neck problems, it was not until August 2008 that he began complaining of persistent hand numbness that necessitated him seeking medical care from an orthopedic surgeon. Petitioner credibly testified that these symptoms were made worse with his work duties, which the Arbitrator notes are physically demanding per Petitioner's testimony and the job description form in evidence. In November 2008, Petitioner's numbness was continually present, as opposed to prior times when it would "come and go." Finally, in December 2008, Petitioner was complaining of the same persistent pain, with further radiating pain into the area between his shoulder blades.

Dr. Williams noted specific work duties that aggravated Petitioner's condition. Dr. Williams discussed Petitioner's work activities with him, as well as reviewed the job description form. Dr. Williams testified that it was within reason that Petitioner's job demands exacerbated his symptoms, necessitating a surgical fusion. Dr. Lange agreed that all care and treatment rendered to Petitioner, including the cervical fusion, was reasonable and necessary. Dr. Lange, however, believed Petitioner's symptoms were simply a continuation from the January 2005 incident. The Arbitrator notes that Petitioner's cervical strain from January 2005 was diagnosed as "resolved," and while Petitioner complained of intermittent problems throughout the time between 2005 and 2008, it was not until August 2008 when Petitioner noted that his condition began to be exacerbated with work activities, and further until November 2008 when these symptoms became so persistent that surgery was necessitated. The Arbitrator finds the opinions of Dr. Williams more realistic and more persuasive than the opinion of Dr. Lange that Petitioner's symptoms in 2008 were nothing more than continued symptoms from the box incident in 2005.

The Arbitrator finds that Petitioner was a credible witness at trial. Petitioner took his time to thoughtfully answer questions posed to him in a truthful and forthcoming manner, including during his cross-examination testimony. The Arbitrator notes this credibility when taking into account Petitioner's history given at trial.

The Arbitrator finds that Petitioner has satisfied his burden of proof that his exacerbation injury was at least in part caused by his work activities, and thus he has suffered a compensable injury. Based on the foregoing, the Arbitrator finds that Petitioner suffered an exacerbation to his pre-existing neck condition that led to surgical fusion as a result of his work activities, and further that his current condition of ill-being is causally related to that injury.

Issue (E): Was timely notice of the accident given to Respondent?

The present three filed claims each indicate a separate injury date with a corresponding case filing number. However, for all intents and purposes, each claimed injury date involves the same injury. Each date simply indicates three separate timeframes where Petitioner noted his injuries were work related and sought medical treatment.

Mr. Jackson, Petitioner's supervisor, indicated that proper notice could be given to the Deputy City Clerk at Respondent's City Hall. Petitioner testified that for all three accident dates, he called Ms. McCann, the assistant to the City Clerk. For the August 2008 accident, Petitioner claimed he called her and told her he was going to see a doctor. For the November and December 2008 accidents, Petitioner claimed he called Ms. McCann and told her that he was having issues with his hands, in that they were numb and tingling, and that he would be seeking medical treatment for these symptoms. Petitioner testified that there would have been no other reason for him to have called the Clerk's office if what he was reporting was not for a work related injury. It was his understanding that the Clerk's office knew why he was calling with this information.

Petitioner's beliefs in this regard are reasonable. Mr. Jackson confirmed that reporting injuries to the Clerk's office constituted proper notice. No one from the Clerk's office was present to testify at trial and rebut Petitioner's claims. Further, while the information given to the Clerk's office could constitute defective or inaccurate notice, Respondent has not shown it was prejudiced by any such inaccuracy or defect. See *Luckenbill v. Industrial Comm'n*, 155 Ill. App. 3d 106, 113-114, 507 N.E.2d 1185 (4th Dist. 1987); *S&H Floor Covering, Inc. v. Workers' Comp. Comm'n*, 373 Ill. App. 3d 259, 264-265, 870 N.E.2d 821 (4th Dist. 2007).

Further, concerning reporting specifically for the December 2008 claim, the Arbitrator finds that proper notice was given. Petitioner is claiming a date of accident for that claim of December 3, 2008. The Application for Adjustment of Claim on that matter was received by the Illinois Workers' Compensation Commission on January 20, 2009, and was filed on January 22, 2009. (See Arbitrator's Exhibit 7). While the Application for Adjustment of Claim entered into evidence concerning that claim indicates Petitioner signed this document on January 9, 2009, the back side of this form is not copied on the exhibit. However, the Arbitrator takes judicial notice of this document in the Illinois Workers' Compensation Commission file on that claim (Case No. 09 WC 2849), and notes on the back side that the "Proof of Service" completed by Petitioner's attorney avers that said Application was sent to Respondent on January 14, 2009. It is therefore reasonable to conclude that Respondent received this Application within the 45 day reporting requirement set forth in the Act. See 820 ILCS 305/6(c).

It should also be noted that Mr. Jackson testified he knew Petitioner was having his surgery at least two days before the surgery occurred, which was January 8, 2009. Therefore, Mr. Jackson would have known about Petitioner's surgery well within the 45 day reporting requirement. As stated, while this constructive notice may be defective and inaccurate, Respondent has not shown prejudice in this regard.

Finally, and further in the alternative, the Arbitrator notes that statutory and proper notice was given as set forth by Section 8(j) of the Act. Petitioner testified that most, if not all, of his medical bills at issue were paid through Respondent's group insurance. The medical bills in Petitioner's Exhibit 9 confirm that many payments were made through insurance payments. Section 8(j) of the Act extends the period of notice of accident. Section 8(j) provides, in pertinent part:

In the event the injured employee receives benefits, including medical, surgical or hospital benefits under any group plan covering non-occupational disabilities contributed to wholly or partially by the employer, which benefits should not have been payable if any rights of recovery existed under this Act, then such amounts so paid to the employee from any such group plan as shall be consistent with, and limited to, the provisions of paragraph 2 hereof, shall be credited to or against any compensation payment for temporary total incapacity for work or any medical, surgical or hospital benefits made or to be made under this Act. *In such event, the period of time for giving notice of accidental injury and filing application for adjustment of claim does not commence to run until the termination of such payments.*

820 ILCS 305/8(j). (emphasis added).

The Arbitrator thus finds that Section 8(j) of the Act extended the Section 6(c) notice period well past any of the notice dates evidenced by testimony or documentation, as referred to above. The Commission had occasion to consider a similar fact pattern in *Rudd v. Harris Corporation*, 11 IWCC 45 (Jan. 13, 2011), and reached the same legal conclusion.

Issue (J): Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Both Dr. Williams and Respondent's examining physician, Dr. Lange, agree that the treatment Petitioner received, including the cervical fusion, was reasonable and necessary. Because of those opinions, and in conjunction with the findings above concerning accident and causation, the Arbitrator awards Petitioner the medical expenses set forth in Petitioner's Exhibit 9, totaling \$3,629.35. It was established that some, if not all, of the medical bills have been paid. Respondent accordingly shall have a credit for all medical bills paid by it or through its group provider pursuant to Section 8(j) of the Act.

Issue (K): What temporary benefits are in dispute? (TTD)

Petitioner was taken off work for his two-level cervical fusion on January 8, 2009, and was released to return to work from Dr. Williams on April 8, 2009. However, Petitioner is claiming that he returned to work earlier, and should only be entitled to temporary total disability benefits through April 4, 2009. (See Arbitrator's Exhibits 1-3). Based on the foregoing conclusions pertaining to accident, causation, and medical treatment, the Arbitrator finds that Petitioner is entitled to TTD benefits from January 8, 2009 through April 4, 2009, a period of 12 2/7 weeks.

Issue (L): What is the nature and extent of the injury?

As a result of the work injury at issue, Petitioner underwent a two-level cervical discectomy and fusion with instrumentation and autograft. The bone graft used in the fusion was taken from Petitioner's pelvis area. The pre- and post-operative diagnoses were: 1. C5-C6, C6-C7 degenerative disc disease; 2. C5-C6, C6-C7 cervical stenosis; 3. Chronic axial neck pain; and 4. Chronic cervical radiculopathy. Petitioner had a good result from surgery, and underwent a course of post-operative physical therapy before returning to work performing the same duties he did as before the accident at issue.

Petitioner currently experiences stiffness in his neck, and gets migraine headaches about one time per month. Lifting heavy items exacerbates his symptoms. The range of motion in his neck is not as free as it used to be. If he moves his neck frequently, it becomes sore. He also experiences numbness in his hip area where bone was taken out for grafting in his neck fusion surgery. He currently takes pain medications and uses ice/heat therapy.

Based on the foregoing, the Arbitrator finds that Petitioner has sustained the 25% loss of use to the person as a whole pursuant to Section 8(d)2 of the Act as a result of his work injury, and awards permanent partial disability benefits accordingly.

STATE OF ILLINOIS)
) SS.
COUNTY OF McLEAN)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rene Diaz,

Petitioner,

vs.

NO: 06 WC 19721

Supreme Catering,

14IWCC0404

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of the nature and extent of Petitioner's disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 4, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.


Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$27,100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: **MAY 29 2014**

TJT:yl

o 4/8/14

51



Thomas J. Tyrrell



Michael J. Brennan



Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

DIAZ, RENE

Employee/Petitioner

Case# **06WC019721**

SUPREME CATERING

Employer/Respondent

14IWCC0404.

On 1/4/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.12% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0404 STEWART C ORZOFF
450 SKOKIE BLVD
SUITE 502
NORTHBROOK, IL 60062

0445 RODDY LEAHY GUILL & ZIMA LTD
RICHARD S ZENZ
303 W MADISON ST SUITE 1500
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
 COUNTY OF COOK)

- ☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

RENE DIAZ,
 Employee/Petitioner

Case # **06 WC 19721**

v.

Consolidated cases: _____

SUPREME CATERING,
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen H. Pulia**, Arbitrator of the Commission, in the city of **Bloomington**, on **12/14/12**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☒ Other _____

FINDINGS

On May 16, 2005, the respondent Supreme Catering was operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between the petitioner and respondent.

On this date, the petitioner *did* sustain injuries that arose out of and in the course of employment.

Timely notice of this accident *was* given to the respondent.

In the year preceding the injury, Petitioner earned \$15,600.00; the average weekly wage was \$300.00.


At the time of injury, the petitioner was 55 years of age, *single* with 4 children under 18.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of \$180.00/week for 150 weeks, because the injuries sustained caused the 30% loss of the **petitioner's person as a whole**, as provided in Section 8(d)2 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of arbitrator

12/31/12
Date

JAN 4 - 2013

This claim proceeded to an arbitration hearing under the Worker's Compensation Act on 2/20/08 before this arbitrator. The issues in dispute were employer-employee, accident, wages, medical expenses, temporary total disability and the nature and extent of the injury. Respondent did not dispute the fact of petitioner's injury. Its' sole defense to the payment of compensation was based on its position that the claimant was an independent contractor rather than an employee of respondent. In a decision filed 3/12/08 this arbitrator found that the petitioner had failed to prove by a preponderance of the credible evidence that the petitioner and respondent were operating under the Illinois Workers' Compensation Act, and their relationship was one of employer and employee. Since compensation was denied on this basis, the arbitrator found the remaining issues moot.

Petitioner sought review of the arbitrator's decision. On 5/11/09 the Commission filed its decision and opinion on review. The Commission reversed the decision of the arbitrator and found that an employee-employer relationship did exist between petitioner and respondent. The Commission ordered respondent to pay petitioner TTD benefits in the amount of \$200 per week for 52-2/7 weeks. The Commission further ordered respondent to pay \$141,917.72 for necessary medical expenses. The Commission reached no decision on the issue of "nature and extent of the injury". It noted that petitioner's treating physician had recommended a functional capacity evaluation and that respondent's IME "indicated the likelihood that (the claimant) would need to undergo rehabilitation" and that after such rehabilitation he "may be able to return to work." Accordingly, the Commission remanded the case to the arbitrator for a determination of the petitioner's "need for vocational rehabilitation and/or maintenance" as well as any need for further treatment, and a determination of the nature and extent of petitioner's disability purportedly pursuant to Thomas v. Industrial Commission, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

Respondent appealed the Commission's decision to the circuit court. On 4/19/10 the circuit court determined the Commission's reversal on credibility grounds was not sufficiently explained, and remanded the case to the Commission to explain the basis for its credibility findings. On 2/9/11, the Commission entered its decision on remand, explaining the basis for its ruling. On 3/31/11 the circuit court entered an order confirming the Commission's decision.

The respondent filed a timely notice of appeal. The Appellate Court held that a decision of the Commission which remands the case to the arbitrator for further proceedings on the issue of vocational rehabilitation is not a final order. It further held that further proceedings are required before an administrative decision is final. The Appellate Court held that the decision of the circuit court requiring the Commission to explain its credibility findings, the Commission decision on remand, and the circuit court's judgment confirming the Commission should each be vacated on this cause remanded to the arbitrator, as the Commission originally ordered, for further proceedings. The circuit court ordered entered on 4/19/10, the Commission's decision on remand entered on

2/9/11, and the judgment of the circuit court confirming the Commission entered on 3/31/11, were all vacated by the Appellate Court for lack of jurisdiction, and remanded the matter to the arbitrator for further proceedings.

This matter is now before this arbitrator for further proceedings on petitioner's "need for vocational rehabilitation and/or maintenance" as well as any need for further treatment, and a determination of the nature and extent of petitioner's disability purportedly pursuant to Thomas v. Industrial Commission, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

On May 16, 2005, petitioner loaded his truck and was on his way to his first stop. As he was getting off Interstate 290 and onto Interstate 90 he took the ramp to quickly and could not slow down. Petitioner lost control of the catering truck and flipped it over. After the truck came to rest, petitioner unbuckled himself and crawled out of the truck. He was taken by ambulance to St. Alexis Medical Center. He was hospitalized from May 16, 2005 through May 24, 2005. While admitted petitioner underwent an open reduction/internal fixation of L4-L5 fracture-dislocation, L3-L6 posterolateral spine fusion utilizing segmental pedicle screw fixation and autogenous iliac crest bone graft harvested through a separate fascial incision. This procedure was performed by Dr. Richard Rabinowicz. Petitioner's post-operative diagnosis was a fracture-dislocation of L4-L5 with osseoligamentous injury involving the vertebral body in front and disruption of the interspinous ligament and ligamentum flavum at the L4-L5 level. Post-operatively petitioner followed-up with Dr. Rabinowicz.

On November 11, 2005 petitioner last followed-up with Dr. Rabinowicz. Petitioner had no severe complaints and overall had been progressing well. Dr. Rabinowicz noted that petitioner was still limited by his injury and had not been able to pursue gainful employment. On physical examination Dr. Rabinowicz noted that petitioner was ambulating independently, his wounds were benign, there were no nerve tension signs, his neurological exam was unchanged, and he had painless range of motion through short flexion extension. Dr. Rabinowicz discussed with petitioner information on activity and restrictions, back care, brace use and care, exercise, disease management, home exercise program, and postop surgery instructions. He noted that petitioner was on complete temporary disability. He was of the opinion petitioner was still temporarily totally disabled. He was of the opinion that petitioner may need an FCE to determine his ultimate disability. Dr. Rabinowicz recommended that petitioner continue with his home exercise and return on an as needed basis.

Petitioner testified that he worked a few days in the summer of 2006 selling ice cream.

On April 4, 2007, petitioner underwent a Section 12 examination with Dr. David Robertson, at the request of the respondent. Petitioner complained of constant back pain with numbness down both legs, the left worse than the right. He stated that the pain radiates down the lateral thigh to his knees and down the L5 dermatome on the left. He stated that the pain increases from a 4/10 to an 8/10 with mild activity. He wakes up frequently during the night because of the pain. Following a detailed medical history, an examination and record review Dr. Robertson opined that petitioner's injuries were related to the motor vehicle accident on May 16, 2005. He further opined

~~that petitioner remained symptomatic because he had become severely deconditioned due in part to the injuries and~~
to the surgery, compounded by the lack of postoperative rehabilitation. Dr. Robertson was of the opinion petitioner should undergo an extensive physical therapy and work hardening program after which he may be able to return to work.

On December 5, 2007, petitioner underwent a Section 12 examination with Dr. Michael Gross that was set up by his attorney. Petitioner stated that he was restricted by his doctor from lifting no more than five pounds. He stated that he takes 2 aspirins a day for pain. Petitioner told Dr. Gross that he was released to work but has been unable to find work because he cannot pass the physicals. Petitioner complained of low back pain all the time. He stated that he does not drive a lot, due to low back pain that wakes him when sleeping. He complained of low back pain with bending, lifting and walking more than three blocks, followed by low back stiffness that causes him to take a couple minutes to straighten. He complained of low back numbness in his left and right thighs, and weakness in his left leg. He stated that he does not do anything, and that he has difficulty lifting heavy weights, due to his low back pain. Petitioner complained of pain in his ribs and upper back when he takes a deep breath, and some left hip pain. Following an examination and x-rays of the lumbar, cervical and left hip, Dr. Gross diagnosed residuals of a low back injury, fracture dislocation of L4-L5 (post-operative state), and residuals of a cervical spine injury. Dr. Gross also performed a record review. Upon completion of the examination and record review, Dr. Gross opined a causal connection between petitioner's current condition of ill-being and the accident on 5/16/05. He was further of the opinion that petitioner's current condition of ill-being was permanent. He was of the opinion that petitioner has a major loss of use of the man as a whole, and moderate loss of use of the left lower extremity.

At trial petitioner reported complaints of pain in his back, left hip, left leg, neck and thoracic spine. Petitioner reported increased pain with bending and sitting or standing in excess of 10 minutes. Petitioner further testified that his pain affects his sleeping.

On 12/14/12 the attorneys for both petitioner (Stewart Orzoff) and respondent (Richard Zenz) appeared before this arbitrator for a hearing on remand. The petitioner's attorney stated that petitioner has since returned to work and he was not looking for any additional medical treatment or medical expenses, vocational rehabilitation, or temporary total disability benefits. The parties stipulated that the only issue they wanted this arbitrator to decide was the nature and the extent of the petitioner's injury. Additionally, the parties did not offer any additional evidence into the record and requested that the arbitrator base her findings as to the nature and extent of the petitioner's permanent disability on the original record and the fact that the petitioner has returned to work.

Having reviewed the entire record regarding this matter, the arbitrator finds the petitioner sustained a 30% loss of use of his person as a whole pursuant to Section 8(d)2 of the Act, as a result of the injuries he sustained on 5/16/05.